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October 24, 1994

Mr. William Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

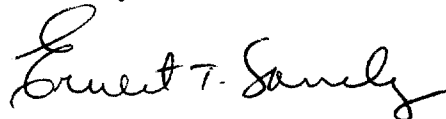
Re: In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252; Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Enclosed, on behalf of Rand McNally & Company, are an original plus eleven (11) copies of a Petition for Reconsideration in the above-captioned matter.

If you have any questions about this matter, please let me know.

Sincerely,



Ernest T. Sanchez  
Counsel for  
Rand McNally & Company

ETS:ck

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20544

In the Matter of	)	GN Docket No. 93-252
	)	
Implementation of Sections 3(n) and 332	)	
of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules To Facilitate Future	)	
Development of SMR Systems in the 800	)	
MHz Frequency Band	)	
	)	
Amendment of Parts 2 and 90 of the	)	PR Docket No. 89-553
Commission's Rules To Provide for	)	
the Use of 200 Channels Outside the	)	
Designated Filing Areas in the 896-901	)	
MHz and 935-940 MHz Band Allotted to	)	
the Specialized Mobile Radio Pool	)	

TO THE COMMISSION:

**PETITION FOR RECONSIDERATION  
OF RAND McNALLY & COMPANY**

Rand McNally & Company ("RMC"), in accordance with 47 C.F.R. § 1.439, submits this Petition for Reconsideration of the Third Report and Order of the Commission in this proceeding, adopted August 9, 1994 and released September 23, 1994 ("Third Report and

Order"). RMC requests that the Commission reconsider its ruling insofar as it mandates use of RMC's MTAs as the geographic boundaries for 900 MHz SMR service.

RMC is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").<sup>1</sup> The MTAs proposed by the Commission as geographic boundaries for the 900 MHz SMR service are substantially similar to RMC's, differing only in minor respects.

**I. RMC HAS NOT LICENSED USE OF ITS MTA/BTA LISTINGS IN CONNECTION WITH 900 MHz SMR SERVICE.**

RMC has licensed use of its MTA/BTA Listings for use in connection with the following services:

(i) 2 GHz broadband Personal Communications Services ("PCS"), as authorized in GEN Docket 90-314 or any successor proceedings;

(ii) 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings;

(iii) 800 MHz wide-area Specialized Mobile Radio Services or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and

(iv) Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

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<sup>1</sup> The MTA/BTA Listings and the MTA/BTA Map will be referred to collectively as the "MTA/BTA Listings."

RMC has *not* licensed the MTA/BTA Listings in connection with 900 MHz SMR service.

The existing license came about after RMC learned, late last year, that the Commission was considering use of its MTAs and BTAs as the geographic boundaries for certain types of personal communications services. We objected, explaining that the Commission could not adopt these boundaries without RMC's consent, as the MTA/BTA Listings are protected by copyright and such action would constitute an unlawful taking of RMC's property.

Subsequently, RMC was approached by PCIA, the Personal Communications Industry Association. PCIA sought, and RMC granted, a blanket license so that all parties with an interest in the FCC proceedings specified in the license would be permitted to reproduce and use the MTA/BTA Listings *only in connection with those proceedings*, subject to the terms of the license. The license made the MTA/BTA Listings available for such purposes in various forms to the Commission and to interested parties either directly from RMC, or indirectly through its licensees under the license.

We advised the Commission of our license agreement with PCIA, and of our consent to use of the MTAs and BTAs in the proceedings specified in the agreement, but only in those proceedings. We indicated then that we were willing to license use of the MTAs and BTAs on reasonable terms for use in other proceedings, if the parties with an interest in those proceedings sought such a license. To date, we have been approached by only one party, who merely sought clarification as to the applicability of the existing license to the 900 MHz SMR service.

## **II. THE COMMISSION MAY NOT MAKE MTAs THE GEOGRAPHIC BOUNDARIES FOR THE 900 MHz SMR SERVICE WITHOUT RMC'S CONSENT**

The Commission has concluded in its Third Report and Order that RMC's MTAs should serve as the geographic boundaries for the 900 MHz SMR service, even though RMC has not licensed use of the MTA/BTA Listings in connection with this service. In so doing, the Commission recognized RMC's copyright in the MTA/BTA Listings, and noted that this service was not covered by our existing license. Third Report and Order at 57 n. 197 and 64 n. 218. It went on to state: "We encourage interested parties and Rand McNally to explore the extension of the current agreement to cover 900 MHz SMR service as well." Id. at 64 n. 218.

We appreciate the Commission's recognition of our copyright rights, and its suggestion that the parties explore a license. Nevertheless, the Commission skirted a fundamental issue in failing to acknowledge explicitly that use of the MTAs for this purpose requires RMC's consent, and has thereby made it easy for the parties to disregard the Commission's suggestion and RMC's rights. We want to make it clear that we strenuously object to use of our MTA/BTA Listings unless and until an appropriate license is entered.

The Commission has no authority to proceed without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not seek to have the MTAs or BTAs used as the geographic boundaries for communications services. If the Commission mandates use of the MTAs and BTAs absent a license by RMC, it will amount to an unlawful

taking of RMC's property. All parties to the relevant proceedings, and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and MTA/BTA Map, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of copyright.

We urge the Commission to reconsider its ruling in the Third Report and Order, and amend it to make clear that the adoption of MTA-based licensing is not final until the license issue is resolved and that the use of the MTAs as geographic boundaries for the 900 MHz SMR service — or, indeed, any other service not covered by RMC's existing license — cannot proceed without a license from RMC. Alternatively, the Commission should amend the Third Report and Order to limit bidding to those parties who have a license agreement, or are covered by a blanket license, from RMC. If the parties are unwilling to enter into a license with RMC, then the Commission should select different geographic boundaries for the 900 MHz SMR service.

We remain willing to license use of the MTA/BTA Listings on reasonable terms so that all parties affected by and interested in Commission proceedings may reproduce, modify and distribute them. But we cannot permit our property to be appropriated by fiat.

### **III. CONCLUSION**

We urge the Commission to amend the Third Report and Order to make it clear to all affected parties that the adoption of MTA-based licensing is not final until the license issue is

resolved and use of the MTAs as geographic boundaries for the 900 MHz SMR service cannot proceed, without a license from RMC. Alternatively, we request that the Commission amend the Third Report and Order explicitly to limit bidding to parties covered by a license -- whether individual or blanket -- from RMC. If the Commission cannot so amend the Third Report and Order, we urge the Commission to select alternative geographic boundary definitions. Absent a license, RMC will take all necessary steps to remedy any unauthorized exercise of its copyright rights by the Commission or any other party.

Respectfully submitted,

RAND MCNALLY & COMPANY

By: Deborah Lipoff /ETS  
Deborah Lipoff, Esq.  
Assistant General Counsel  
RAND MCNALLY & COMPANY  
8255 North Central Park  
Skokie, Illinois 60076  
(708) 329-6258

By: Ernest T. Sanchez  
Ernest T. Sanchez, Esq.  
BAKER & McKENZIE  
815 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20006  
(202) 452-7000

Counsel for Rand McNally & Company

Dated: October 24, 1994